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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,863	04/20/2001	Joao Augusto Mattar Neto	70317.1200	4421
7590	06/21/2004			EXAMINER
Ronald Abramson Peter A. Sullivan Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004-1482			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/838,863	MATTAR NETO ET AL.	
	Examiner AARON J. LEWIS	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 April 2001.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10, 12-19 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5, 12-14 and 19 is/are rejected.
- 7) Claim(s) 15-18 and 25-29 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5,12-14,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kee ('582) in view of Bayron et al. ('199).

The difference between Kee and claim 1 is a sphere valve having a first end releasably attached to the second end of the terminal, and a second end.

Bayron et al. teach a sphere valve (10) having a first end (16) that is adapted to be releasably attached to the second end of a terminal, and a second end (18). The purpose of the sphere valve (10) of Bayron et al. is to treat a patient without having to disconnect the respirator support system and resuscitation bag which prevents a loss of PEEP in the patient's lungs and guards against lung collapse and hemodynamic compromise (col.3, lines 37-43).

It would have been obvious to modify the respirator manifold (12) of Kee to include a sphere valve because it would have provided a means for treating a patient without having to disconnect the respirator support system and resuscitation bag which prevents a loss of PEEP in the patient's lungs and guards against lung collapse and hemodynamic compromise as taught by Bayron et al..

As to claim 2, the suction valve (10) of Kee may be conveniently locked (col.5, lines 23-46).

As to claim 3, the first end (16) of the connection of the suctioning valve has a progressive staggering for receiving vacuum lines of varied diameters.

As to claim 5, the probe (11) of Kee (col.6, lines 29-31) has a sleeve like tie rod (15).

As to claim 8, Kee (fig.1) illustrates a terminal having an instillation route defined by a tubular projection radially extending from the terminal.

As to claim 9, Kee (col.7, lines 33-39 and lines 48-50) discloses a diaphragm that automatically reseals after instillation.

As to claim 10, the sphere valve (10) of Bayron et al. has a casing (12), a sphere shaped element (14) disposed in the casing and comprising a central section and two supplementary sections, and a handle (50) connected to the central section, the central section having a transversal channel (36) sized to receive the probe, and wherein the handle is operable to be turned reversibly from a first position where the transversal channel is aligned with the probe to open a passage for the probe toward the patient/ventilator connection to a second position where the transversal channel is not aligned with the probe to close the passage (col.6, lines 56-60).

As to claims 12-14, Bayron et al. teach indices (46,48) for positively positioning the handle (50). It would have been obvious to further modify the face of the valve (10) of Bayron et al. to include additional markings indicative of the positioning of the handle including color markings as an obvious matter of design choice with no new or unobvious results accruing. The use of color markings on the valve of Bayron et al.

would have constituted nothing more than an alternate manner of marking the valve position.

As to claim 19, the shape of the suctioning valve of Kee (fig.2) is illustrative of an anatomic and inclined shape.

***Claim Objections***

3. Claims 1,5,18,26,28 are objected to because of the following informalities: in claim 1, last line "...value..." should read --valve--; in claim 5, line 1, "...sleeve like..." should read --sleeve shaped--; in claim 18, line 2, "...of o-ring type" should read --o-ring--; in claims 26 and 28, "...trunk like..." should read --trunk shaped--. The use of the language "-like" renders the scope of the claim(s) unclear because the claim(s) include(s) elements not actually disclosed (those encompassed by "-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Appropriate correction is required.

***Allowable Subject Matter***

4. Claims 15-18,25-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant secretion suctioning devices.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
June 18, 2004